

**IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (QBD)
FINANCIAL LIST
FINANCIAL MARKETS TEST CASE SCHEME
Neutral Citation [2020] EWHC 2448 (Comm)
BETWEEN:**

THE FINANCIAL CONDUCT AUTHORITY

Appellant

-and-

**(1) ARCH INSURANCE (UK) LTD
(2) ARGENTA SYNDICATE MANAGEMENT LTD
(3) ECCLESIASTICAL INSURANCE OFFICE PLC
(4) HISCOX INSURANCE COMPANY LTD
(5) MS AMLIN UNDERWRITING LTD
(6) QBE UK LTD
(7) ROYAL & SUN ALLIANCE INSURANCE PLC
(8) ZURICH INSURANCE PLC**

Respondents

-and-

HISCOX ACTION GROUP

Intervener

**SUBMISSIONS OF ARCH
IN RELATION TO DECLARATIONS**

Introduction

1. The Court will have been presented with a draft Declarations Document and joint submissions from Arch (R1), Argenta (R2), Hiscox (R4), MS Amlin (R5), QBE (R6) and RSA (R8).
2. Arch also wishes to make a separate submission below concerning the importance of declaration 10B, set out below.

Declaration 10B

3. Arch seeks the following declaration from the Court at paragraph 10B of the draft Declarations Document, as follows:

10B. Where access to a discrete part of the premises, or where access to the premises for a discrete part of the policyholder's business, has been completely stopped from happening or made impossible, there is only cover for the loss which such prevention of access has caused.

4. The effect of the judgment is that the Arch policy provides cover only for losses which were caused by a prevention of access. The factual enquiry is of a 'binary' nature: a claim exists for any discrete parts of the business which were completely stopped from happening, but not for discrete parts of the business which could be continued. The 'binary' nature of the enquiry is referred to in the Judgment at §137 (see also §§151, 281 and 283).
5. The purpose of Declaration 10B is to explain that point as clearly and succinctly as possible, for the benefit of the numerous policyholders who are affected by the Judgment of the Court.
6. The FCA has not advanced any objection in principle to Declaration 10B. Its objection is that it is unnecessary in light of Declaration 10A.
7. Arch, however, considers that clarity for policyholders is important. In each case where a business has discrete parts, and only some of them are affected by an insured peril, information must be requested from policyholders and an explanation given as to how the information will bear upon the outcome of the adjustment. A reasoned assessment must be made as to the extent of the business's recovery. Although Arch recognises that an adequate explanation may be derived from the relevant paragraphs of the Judgment, recent correspondence with policyholders and their advisers suggests that there may be scope for confusion. Accordingly, in order for the judgment to be faithfully and consistently applied across a large number of claims, Arch considers that there would be a substantial benefit in having the succinct statement of principle set out in declaration 10B.

JOHN LOCKEY QC
JEREMY BRIER
12 February 2021